

AMENDED IN SENATE MARCH 3, 2010

SENATE BILL

No. 895

Introduced by Senator Huff

January 25, 2010

~~An act to amend Section 13353 of the Vehicle Code, relating to vehicles.~~ *An act to amend Section 13353.3 of the Vehicle Code, relating to vehicles, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 895, as amended, Huff. Vehicles: driver's license: suspension.

(1) Existing law that will become operative on July 1, 2010, authorizes a person who has been convicted of specified driving under the influence (DUI) offenses and who has had his or her driving privilege suspended or revoked to apply to the Department of Motor Vehicles for a restricted driver's license, if certain conditions, including that the person has installed an ignition interlock device, are met.

Existing law requires the department to immediately suspend the driving privilege of a person if the person was driving a motor vehicle with 0.08% or more of alcohol in his or her blood, the person was under 21 years of age and had a blood-alcohol level of 0.01% or more, the person was driving a vehicle that requires a commercial driver's license and had 0.04% or more of alcohol in his or her blood, or the person was driving a motor vehicle when he or she was on probation for a specified DUI violation and had 0.01% or more of alcohol in his or her blood. If the person has been convicted of one or more separate DUI violations, has been administratively determined to have refused chemical testing, or has been administratively determined to have been driving with an excessive concentration of alcohol on a separate occasion, which offense or occasion occurred within 10 years of the

occasion in question, existing law requires the period of suspension to be one year.

This bill would require the one-year suspension to terminate if the person has been convicted of a violation arising out of the same occurrence and the person meets specified conditions, including that he or she is otherwise eligible for a restricted driver's license and installs an ignition interlock device for purposes of that restricted driver's license.

(2) This bill would declare that it is to take effect immediately as an urgency statute.

~~Existing law requires the Department of Motor Vehicles to suspend a person's privilege to operate a motor vehicle for one year or revoke a person's privilege for 2 or 3 years under specified circumstances, if the person refuses an officer's request to submit to, or fails to complete, a chemical test, and the officer had reasonable cause to believe that the person was operating a motor vehicle under the influence and had provided a sworn statement stating so.~~

~~This bill would make technical, nonsubstantive changes to that provision.~~

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: ~~no~~^{yes}. State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 13353.3 of the Vehicle Code is amended*
2 *to read:*

3 13353.3. (a) An order of suspension of a person's privilege to
4 operate a motor vehicle pursuant to Section 13353.2 shall become
5 effective 30 days after the person is served with the notice pursuant
6 to Section 13382 or 13388, or subdivision (b) of Section 13353.2.

7 (b) The period of suspension of a person's privilege to operate
8 a motor vehicle under Section 13353.2 is as follows:

9 (1) If the person has not been convicted of a separate violation
10 of Section 23103, as specified in Section 23103.5, ~~of or~~ Section
11 23140, 23152, or 23153, ~~of or~~ Section 191.5 or subdivision (a) of
12 Section 192.5 of the Penal Code, the person has not been
13 administratively determined to have refused chemical testing
14 pursuant to Section 13353 or 13353.1, or the person has not been
15 administratively determined to have been driving with an excessive
16 concentration of alcohol pursuant to Section 13353.2 on a separate

1 occasion, ~~that~~ *which* offense or occurrence occurred within 10
2 years of the occasion in question, the person's privilege to operate
3 a motor vehicle shall be suspended for four months.

4 (2) (A) If the person has been convicted of one or more separate
5 violations of Section 23103, as specified in Section 23103.5, *or*
6 Section 23140, 23152, or 23153, *or* Section 191.5 or subdivision
7 (a) of Section 192.5 of the Penal Code, the person has been
8 administratively determined to have refused chemical testing
9 pursuant to Section 13353 or 13353.1, or the person has been
10 administratively determined to have been driving with an excessive
11 concentration of alcohol pursuant to Section 13353.2 on a separate
12 occasion, ~~that~~ *which* offense or occasion occurred within 10 years
13 of the occasion in question, the person's privilege to operate a
14 motor vehicle shall be suspended for one year, *except as provided*
15 *in subparagraph (B).*

16 (B) *The one-year suspension pursuant to subparagraph (A)*
17 *shall terminate if the person has been convicted of a violation*
18 *arising out of the same occurrence and all of the following*
19 *conditions are met:*

20 (i) *The person is eligible for a restricted driver's license*
21 *pursuant to Section 13352.*

22 (ii) *The person installs an ignition interlock device as required*
23 *in Section 13352 for that restricted driver's license.*

24 (iii) *The person complies with all other applicable conditions*
25 *of Section 13352 for a restricted driver's license.*

26 (3) Notwithstanding any other provision of law, if a person has
27 been administratively determined to have been driving in violation
28 of Section 23136 or to have refused chemical testing pursuant to
29 Section 13353.1, the period of suspension shall not be for less than
30 one year.

31 (c) If a person's privilege to operate a motor vehicle is
32 suspended pursuant to Section 13353.2 and the person is convicted
33 of a violation of Section 23152 or 23153, including, but not limited
34 to, a violation described in Section 23620, arising out of the same
35 occurrence, both the suspension under Section 13353.2 and the
36 suspension or revocation under Section 13352 shall be imposed,
37 except that the periods of suspension or revocation shall run
38 concurrently, and the total period of suspension or revocation shall
39 not exceed the longer of the two suspension or revocation periods.

(d) For the purposes of this section, a conviction of an offense in any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or the Dominion of Canada that, if committed in this state, would be a violation of Section 23103, as specified in Section 23103.5, or Section 23140, 23152, or 23153, or Section 191.5 or subdivision (a) of Section 192.5 of the Penal Code, is a conviction of that particular section of the Vehicle Code or Penal Code.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make conforming changes to the Vehicle Code for statutory provisions that will be operative on July 1, 2010, it is necessary that this act take immediate effect.

~~SECTION 1. Section 13353 of the Vehicle Code is amended to read:~~

~~13353. (a) If a person refuses the officer's request to submit to, or fails to complete, a chemical test or tests pursuant to Section 23612, upon receipt of the officer's sworn statement that the officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23140, 23152, or 23153, and that the person had refused to submit to, or did not complete, the test or tests after being requested by the officer, the department shall do one of the following:~~

~~(1) Suspend the person's privilege to operate a motor vehicle for a period of one year.~~

~~(2) Revoke the person's privilege to operate a motor vehicle for a period of two years if the refusal occurred within 10 years of either (A) a separate violation of Section 23103 as specified in Section 23103.5, or of Section 23140, 23152, or 23153, or of Section 191.5 or subdivision (a) of Section 192.5 of the Penal Code, that resulted in a conviction, or (B) a suspension or revocation of the person's privilege to operate a motor vehicle pursuant to this section or Section 13353.2 for an offense that occurred on a separate occasion.~~

~~(3) Revoke the person's privilege to operate a motor vehicle for a period of three years if the refusal occurred within 10 years of any of the following:~~

1 ~~(A) Two or more separate violations of Section 23103 as~~
2 ~~specified in Section 23103.5, or of Section 23140, 23152, or 23153,~~
3 ~~or of Section 191.5 or subdivision (a) of Section 192.5 of the Penal~~
4 ~~Code, or any combination thereof, that resulted in convictions.~~

5 ~~(B) Two or more suspensions or revocations of the person's~~
6 ~~privilege to operate a motor vehicle pursuant to this section or~~
7 ~~Section 13353.2 for offenses that occurred on separate occasions.~~

8 ~~(C) A combination of two or more of those convictions or~~
9 ~~administrative suspensions or revocations.~~

10 ~~(b) The officer's sworn statement shall be submitted pursuant~~
11 ~~to Section 13380 on a form furnished or approved by the~~
12 ~~department. The suspension or revocation shall not become~~
13 ~~effective until 30 days after the giving of written notice thereof,~~
14 ~~or until the end of a stay of the suspension or revocation, as~~
15 ~~provided for in Section 13558.~~

16 ~~(c) For the purposes of this section, a conviction of an offense~~
17 ~~in any state, territory, or possession of the United States, the~~
18 ~~District of Columbia, the Commonwealth of Puerto Rico, or the~~
19 ~~Dominion of Canada that, if committed in this state, would be a~~
20 ~~violation of Section 23103, as specified in Section 23103.5, or~~
21 ~~Section 23140, 23152, or 23153, or Section 191.5 or subdivision~~
22 ~~(a) of Section 192.5 of the Penal Code, is a conviction of that~~
23 ~~particular section of the Vehicle Code or Penal Code.~~

24 ~~(d) If a person on more than one occasion in separate incidents~~
25 ~~refuses the officer's request to submit to, or fails to complete, a~~
26 ~~chemical test or tests pursuant to Section 23612 while driving a~~
27 ~~motor vehicle, upon the receipt of the officer's sworn statement~~
28 ~~that the officer had reasonable cause to believe the person had~~
29 ~~been driving a motor vehicle in violation of Section 23140, 23152,~~
30 ~~or 23153, the department shall disqualify the person from operating~~
31 ~~a commercial motor vehicle for the rest of his or her lifetime.~~

32 ~~(e) The notice of the order of suspension or revocation under~~
33 ~~this section shall be served on the person by a peace officer~~
34 ~~pursuant to Section 23612. The notice of the order of suspension~~
35 ~~or revocation shall be on a form provided by the department. If~~
36 ~~the notice of the order of suspension or revocation has not been~~
37 ~~served by the peace officer pursuant to Section 23612, the~~
38 ~~department immediately shall notify the person in writing of the~~
39 ~~action taken. The peace officer who serves the notice, or the~~
40 ~~department, if applicable, also shall provide, if the officer or~~

1 department, as the case may be, determines that it is necessary to
2 do so, the person with the appropriate non-English notice developed
3 pursuant to subdivision (d) of Section 14100.

4 (f) Upon the receipt of the officer's sworn statement, the
5 department shall review the record. For purposes of this section,
6 the scope of the administrative review shall cover all of the
7 following issues:

8 (1) Whether the peace officer had reasonable cause to believe
9 the person had been driving a motor vehicle in violation of Section
10 23140, 23152, or 23153.

11 (2) Whether the person was placed under arrest.

12 (3) Whether the person refused to submit to, or did not complete,
13 the test or tests after being requested by a peace officer.

14 (4) Whether, except for a person described in subdivision (a)
15 of Section 23612 who is incapable of refusing, the person had been
16 told that his or her driving privilege would be suspended or revoked
17 if he or she refused to submit to, or did not complete, the test or
18 tests.

19 (g) The person may request an administrative hearing pursuant
20 to Section 13558. Except as provided in subdivision (e) of Section
21 13558, the request for an administrative hearing does not stay the
22 order of suspension or revocation.

23 (h) The suspension or revocation imposed under this section
24 shall run concurrently with any restriction, suspension, or
25 revocation imposed under Section 13352, 13352.4, or 13352.5 that
26 resulted from the same arrest.